UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL INC., ET AL., Plaintiffs, v. YOUTUBE, INC., ET AL., Defendants.	ECF Case Civil No. 07-CV-2103 (LLS)
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, ET AL., on behalf of themselves and all others similarly situated, Plaintiffs, v. YOUTUBE, INC., ET AL., Defendants.	ECF Case Civil No. 07-CV-3582 (LLS)

DECLARATION OF STEVE CHEN IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT

STEVE CHEN, pursuant to 28 U.S.C. § 1746, hereby declares as follows:

- I, along with Chad Hurley and Jawed Karim, founded YouTube, Inc. ("YouTube"). I served as YouTube's Chief Technical Officer. I submit this declaration in support of YouTube' opposition to plaintiffs' motions for partial summary judgment.

- Plaintiffs point to an email from me concerning a problem with our Internet service provider ("ISP"). I wrote that "I *think* it's because we're hosting copyrighted content." The complaint from YouTube's ISP was about someone sending junk email from YouTube's IP address, not about the videos on YouTube or any copyright issues. A

true and correct copy of an email that I sent to Chad Hurley and Jawed Karim on June 15, 2005 reflecting this is attached hereto as Exhibit 1. In my initial email, I expressed concern that our ISP might have been requesting that we remove content solely in response to a complaint that we had never seen. I did not think that would be appropriate. My concern did not come from a desire to have YouTube host unauthorized material. And YouTube did not change its ISP based on this email exchange.

- Plaintiffs also state that an email from me shows that YouTube knew about and decided to keep "truckloads" of infringing videos on the site. That is not what I wrote. The document says that one can find such content "if you search for the right tags *on Flickr*" (a photo-sharing site now owned by Yahoo!). The document describes one idea that I had regarding "borderline" content, that is, videos that were "racy" but not pornographic, or videos as to which authorization might have been debatable. As my email shows, I was responding to an inquiry from Roelof Botha about his concern that "racy" videos being uploaded to YouTube might alienate some users. I wanted users to see that YouTube was a place for personal videos, and so I had the idea of downgrading the prominence or visibility of any videos that were "borderline," even if they were not subject to outright removal under the law or our terms of use. In any event, we did not adopt that policy.

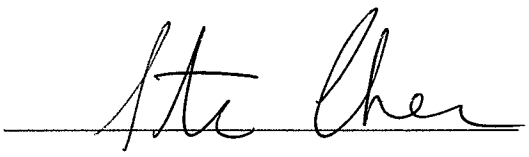
- Plaintiffs claim that I concluded that 80% of traffic on YouTube "depended on pirated videos." They are wrong. My suggestion that removing certain videos would reduce traffic by 80% concerned "stupid" and "viral" videos, not clips from movies or television shows. Those terms refer to videos of pranks or stunts circulating on the

Internet. Chad Hurley was concerned that YouTube was "becoming another big-boys or stupidvideos," sites that primarily hosted "stupid" and "viral" videos. He proposed that YouTube start removing "stupid" videos altogether. I disagreed, arguing that "if we do remove that stuff, site traffic and virality will drop to maybe 20% of what it is." My statement was a sheer guess, supported by no research or evidence. It was based on the well known 80/20 rule stating that 80% of effects come from 20% of causes. When I said that removing "that stuff" would result in site traffic dropping to "20% of what it is," I was referring to the type of videos available on big-boys and stupidvideos, not ones that were suspect for copyright reasons. My next message confirms that by reiterating my prediction and then engaging in a separate analysis of the "copyright infringement stuff." Jawed Karim's response said that YouTube should "continue" removing clips from movies and television shows, adding "if we keep that policy, *I don't think our views will decrease at all.*" I expressly agreed with Karim's observations and reaffirmed that YouTube should "take down whole movies. take down entire TV shows."

- In an email that I sent to Chad Hurley on July 29, 2005 with the subject line "filecabi.net," I wrote "Steal it!" That was a joke, not a serious proposal as can be seen by my follow-up message in which I wrote: "haha ya. or something. just something to watch out for. check out their alexa ranking." I was not advocating that YouTube "steal" anything from filecabi.net, which was a site dedicated to "stupid" and "prank" videos and was similar to big-boys and stupidvideos. When I wrote to Hurley that "the only reason why our traffic surged was due to a video of this type," I was referring to viral videos like an early YouTube video of a person playing the drinking game "quarters."

- In a late-night chat with Maryrose Dunton I wrote, "[i]f I were running the show, I'd say, we concentrate all of our efforts in building up our numbers as aggressively as we can through whatever tactics, however evil, i.e. scraping MySpace." When I wrote "if I were running the show," I was referring to the fact that Chad Hurley was the CEO of the company, not me. My reference to "scraping MySpace" concerned an idea to run a computer program on the MySpace website to gather information about MySpace users, which had nothing to do with copyright and which, in any event, we did not implement. My reference to "building up our numbers as aggressively as we can" had nothing to do with copyright issues.

I certify under penalty of perjury under the laws the United States that the foregoing is true and correct. Signed this 28th day of April, 2010 at San Francisco, California.



Steve Chen